

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FELIX BRIZUELA,

Plaintiff,

v.

CIVIL NO. 1:22-CV-69
(KLEEH)

MICHAEL DERISO,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 20] IN PART
AND DISMISSING ACTION WITH PREJUDICE

On August 10, 2022, the pro se Plaintiff, Felix Brizuela, filed a Complaint against Defendant Michael DeRiso, an attorney who formerly represented Plaintiff. Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï (the "Magistrate Judge") for initial review. On September 16, 2022, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court dismiss the action without prejudice for failure to state a claim [ECF No. 12]. Plaintiff filed objections to the R&R on September 22, 2022 [ECF No. 14] and filed an Amended Complaint on October 31, 2022 [ECF No. 17]. On December 12, 2022, the Magistrate Judge entered a second R&R, recommending dismissal of the Amended Complaint without prejudice [ECF No. 20].

The second R&R informed Plaintiff that he had fourteen (14) days from the date of service of the R&R to file "specific written

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objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection." It further warned him that the "[f]ailure to timely file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." On March 24, 2023, Plaintiff filed a document that could be construed as objections to the second R&R [ECF No. 23]. In his Objections, however, Plaintiff does not specifically object to any of the Magistrate Judge's findings.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciro v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

General objections to a magistrate judge's report and recommendation are tantamount to a failure to object because they do not direct the court's attention to any specific portions of the report. Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982)

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(de novo review is not required where objections are general and conclusory); United States v. Midgette, 478 F.3d 616, 622 (4th Cir. 2007) (“[T]o preserve for appeal an issue in a magistrate judge’s report, a party must object to the finding or recommendation on that issue with sufficient specificity as reasonably to alert the district court of the true ground for the objection.”).

Here, again, Plaintiff does not object to any of the Magistrate Judge’s findings. As such, the Court is under no obligation to conduct a de novo review. Accordingly, the R&R was reviewed for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS IN PART** the second R&R [ECF No. 20]. Rather than dismissing without prejudice as recommended, the Court finds that the action shall be **DISMISSED WITH PREJUDICE** and **STRICKEN** from the Court’s active docket. The motion to proceed in forma pauperis is **DENIED** [ECF No. 2], and the first R&R is **DENIED AS MOOT** [ECF No. 12].

It is so **ORDERED**.

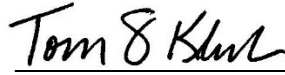
The Clerk is directed to transmit copies of this Order to counsel of record via email and the pro se Plaintiff via certified mail, return receipt requested.

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DATED: June 13, 2023

Handwritten signature of Thomas S. Klee in black ink.

THOMAS S. KLEEH, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA